

REMARKS/ARGUMENTS

Applicant has received and carefully reviewed the Office Action mailed September 25, 2009. Currently, claims 28-26 and 44-46 are pending and have been rejected. Claims 28 and 33 have been amended. Favorable consideration of the above amendments and the following remarks is respectfully requested.

Claim Rejections – 35 USC § 112

Claims 33-36 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Examiner states that claim 33 discusses the catheter in terms of its “natural state” outside the patient, in relation to various planes of the patient, and asserts that the terms are not definite and do not further limit the device as they describe only its orientation relative to the patient and have no positive definition in the absence of a patient.

With this amendment, claim 33 has been amended to clarify the relationship of the elements, and no longer references a patient. Accordingly, Applicant submits that the claims are definite and respectfully requests that the rejection be withdrawn.

Claim Rejections – 35 USC § 102

Claims 28-32 were rejected under 35 U.S.C. §102(b) as being anticipated by Voda (U.S. Publication No. 2002/0103474). After careful review, Applicant must respectfully traverse this rejection, particularly in view of the current amendments.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)...“The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (MPEP 2131).

In making the rejection, the Examiner determined that whether or not the distal tip follows the second plane as it rotates is based on the direction of rotation. With this amendment, the claimed rotation has been clarified as clockwise, which is also consistent

with the rotation disclosed in the Voda specification (see paragraph [0023]). However, clockwise rotation of Voda will not result in distal tip 22 following second plane 26, as required by the currently amended claims. Accordingly, the structure of the claimed catheter must be different from that of Voda.

For at least the reasons discussed above, Voda does not appear to disclose each and every element of independent claim 28. Therefore, Voda cannot anticipate the claim. Since claims 29-32 depend therefrom and add additional elements thereto, Applicant submits that these claims are also not anticipated by Voda. Withdrawal of the rejection is respectfully requested.

Claim Rejections – 35 USC § 103

Claims 33-36 and 44-46 were rejected under 35 U.S.C. §103(a) as being unpatentable over Voda (U.S. Publication No. 2002/0103474). After careful review, Applicant must respectfully traverse this rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). (MPEP 2143.03).

For at least the reasons discussed above, Voda does not appear to disclose or suggest each and every element of independent claim 28. Therefore, claim 28 is believed to be patentable over Voda. Since claims 33-36 and 44-46 depend therefrom and add additional elements thereto, Applicant submits that these claims are also patentable over Voda. Withdrawal of the rejection is respectfully requested.

Double Patenting Rejection

Claims 28-36 and 44-46 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,595,983. After careful review, Applicant must respectfully traverse this rejection, particularly in view of the current amendments.

Applicant will consider filing an appropriate terminal disclaimer at such time as

the claims would otherwise be allowable. However, Applicant believes that the current amendments render the nonstatutory obviousness-type double patenting rejection moot. As discussed above, claim 28 is both physically and functionally different from that disclosed by Voda.

Conclusion

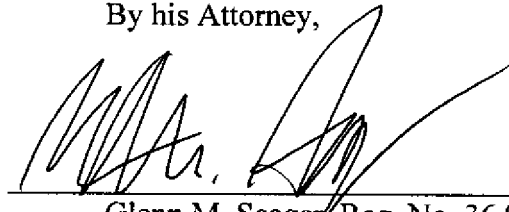
In view of the foregoing, all pending claims are believed to be in condition for allowance. Further examination, reconsideration, and withdrawal of the rejections are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Jan K. Voda

By his Attorney,

Date: Dec. 16, 2008

A handwritten signature in black ink, appearing to read 'Glenn M. Seager', is written over a horizontal line.

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